United States Senate

WASHINGTON, DC 20510

April 9, 2003

Country of Origin Labeling Program
Agricultural Marketing Service
United States Department of Agriculture
Stop 0249, Room 2092-S
1400 Independence Avenue, SW
Washington, D.C. 20250-0249

RE: Federal Register, Volume 67, Number 198, Friday, October 11, 2002.
Establishment of Guidelines for the Interim Voluntary Country of Origin Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts under the Authority of the Agricultural Marketing Act of 1946.

Dear Associate Deputy Administrators Forman and Sessions:

The undersigned United States Senators welcome the opportunity to comment on United States Department of Agriculture (USDA) voluntary country of origin labeling guidelines. We understand that USDA will begin to promulgate a regulation for mandatory labeling this month, and that the regulation will likely be based in part on the voluntary rules and input received concerning the guidelines in the Federal Register.

We support Section 10816 of Public Law 107-171 (7 U.S.C. 1638-1638d) which amends the Agricultural Marketing Act of 1946 to require retailers to inform consumers of the country of origin for commodities covered under the Section, including beef, lamb, pork, fish, perishable agricultural commodities, and peanuts. We submit the following comments regarding the law in a format that follows the Federal Register notice.

Key Components of the Law

The purpose of the labeling law is to inform consumers about the origin of the meat, fish, peanuts, and perishable commodities they purchase at the retail-level. The items that qualify as covered commodities must be labeled with their country of origin.

Under present law, most products require labeling according to their country of origin if they are produced outside of the United States.

However, some products, such as fruits, vegetables, and peanuts have been excluded from this requirement. Further, meat from livestock or fish born outside of the United States, or born and raised outside of the United States, and slaughtered or processed within the United States, are not currently required to be identified as a foreign product.

The Secretary should attempt to create a labeling program that is consumer-friendly and easy-to-understand.

The labeling law encompasses a wide universe of covered commodities. As such, it is critical that USDA work to minimize the paperwork burden and record keeping costs associated with labeling.

We believe existing programs or records used by producers, packers, suppliers, wholesalers and retailers can be used to verify the origin of many covered commodities. To the maximum degree possible, we encourage USDA to permit producer self-certification and random audits of the flow of information in order to verify the origin of covered commodities.

Defining Covered Commodities

In the case of meat, the law intends for retailers to designate a covered commodity as having a U.S. country of origin only if the meat is from an animal that was born, raised, and slaughtered in the U.S. An exception is made for beef from cattle born and raised in Alaska or Hawaii, and transhipped for a period of days through Canada into the U.S. prior to slaughter. The labeling requirement shall apply to all muscle cuts of beef, pork, and lamb. Furthermore, ground beef (including, but not limited to hamburger and ground beef patties, whether frozen, chilled, or fresh), ground lamb, and ground pork qualify as covered commodities.

In the case of seafood, U.S. country of origin shall apply to farm raised and net pen fish and shellfish both hatched and processed in the U.S. Fillets, steaks, nuggets as well as any other flesh of the fish or shellfish shall be included. Wild fish harvested in the waters of the U.S. or by a U.S. flagged vessel and processed in the U.S. or aboard a U.S. flagged vessel will also be considered to be of U.S. country of origin. The addition of breading or other spices shall not constitute a material change to the product.

For perishable agricultural commodities and peanuts, only those products produced in the U.S. shall be eligible for a U.S. country of origin designation. Country of origin labeling will be required on fresh and frozen fruits and vegetables of every kind and character where the original character has not been changed in addition to cherries in brine as defined by the Secretary in accordance with trade usage. For example, frozen vegetables would require a country of origin label whereas frozen concentrated orange juice would not.

Processed and Blended Food Items

If a covered commodity is an ingredient in a processed food, the law does not require that item to be labeled as to its country of origin. For example, if beef is an ingredient in a can of soup, than the law does not require the soup containing beef to be labeled with its country of origin. However, this exemption shall not apply to ground beef or hamburger, which must qualify as a covered commodity for country of origin labeling at the retail-

level. Accordingly, we do not believe the addition of water, salt, or flavoring to ground meat alters the covered commodity to a point where it should no longer be labeled by its country of origin.

We agree with USDA's interpretation of what an excluded processed food item is in regards to perishable agricultural commodities. For blended products that contain perishable agricultural commodities, we feel it is sufficient for a blended product to be labeled with all countries of origin and that each individual constituent or component is not required to be individually designated. For example, the product commonly recognized as bagged salad can be identified on the label as a product of one or more countries.

USDA should also recognize that the different covered commodities, by their very nature, may be excluded under the processed food item clause under different definitions.

The addition of spices, breading or other coating of covered fish and shellfish should not constitute a material change under the guidelines and thus, should require a country of origin designation. Thus, shrimp or other seafood imported from a foreign nation and breaded in the U.S. must be labeled as a product of that nation, not of the U.S. Such an approach ensures that consumers obtain accurate information about the source of the seafood. Any interpretation of the law that could be used to mislead consumers as to the true origin of the seafood would be contrary to Congressional intent and would undermine the very purpose of the law.

Furthermore, we do not believe that cooking or canning alters the character of a fish product to the point that its character is no longer that of the covered seafood. Salmon flesh in a can is still salmon flesh, and is within the range of products Congress clearly intended to be covered. Cod or pollock flesh in a breaded fish stick is still cod or pollock flesh. It is inconsistent to suggest that a fish stick consisting of reformed fish covered in breading is to be exempted, but a breaded fish fillet is not. Also, some sushi products, such as sashimi (sliced raw fish) offered as a separate item, should not be exempted, where the same fish used as only an ingredient in a sushi roll might be. Surimi, however, may logically be treated differently, as the process of manufacturing surimi from fish flesh does indeed change it from recognizable flesh to a stabilized gel with very different characteristics. Food products subsequently produced from surimi, such as imitation crab meat, may be judged accordingly.

For peanuts, we believe that roasting, salting, or other processes that leave the peanut intact, or in a recognizable form would not be considered as processed.

Method of Notification

The labeling law does not prescribe the specific type or method of country of origin label that must be used on covered commodities. The means by which the country of origin is designated may differ on a commodity-by-commodity basis. For example, an affixed-sticker may designate the country of origin of a package of ground beef, while a sign on a

holding bin may indicate the country of origin of fruit or vegetables. The law provides examples by which the country of origin of a covered commodity may be provided at the retail-level, including a label, stamp, mark, placard, or other clear visible sign on the covered commodity or on the package, display, holding unit, or bin containing the covered commodity at the final point of sale to consumers.

The Secretary is encouraged to seek input from producer and farm organizations, consumers and consumer groups, and the businesses affected by the law when determining the method of notification to consumers the country of origin of covered commodities.

Verification and Enforcement

USDA must recognize that the commodities to be labeled are produced, handled, marketed and regulated in different ways. With this in mind, USDA should work with producers, suppliers, and retailers to use existing programs and frameworks to verify the origin of commodities. Most importantly, we encourage USDA to work with parties affected by the labeling law to minimize cost, record keeping, and regulatory burdens.

Generally, we do not believe that whole new record keeping systems would be required to verify the origin of products to be labeled in accordance with the law. We firmly believe that producers already maintain many of the production and health records that can be relied upon to help verify origin of covered commodities derived from the products they raise or grow. Moreover, producers, ranchers, processors, and retailers already keep a variety of information on their sales and purchases for business reasons and in order to comply with federal income tax laws. USDA should design a system to prevent misrepresentation of covered commodities without overly burdensome rules.

For perishable agricultural commodities and peanuts, the primary framework is the existing Perishable Agricultural Commodities Act (PACA). Under current PACA requirements a verifiable audit trail already exists as to perishable agricultural commodities and peanuts. We see no reason that this established framework cannot be used to verify the country of origin of perishable agricultural commodities. For imported perishable agricultural commodities and peanuts, existing federal laws, including the Tariff Act of 1930, require that the country of origin for these products be identified. There is no reason that this information cannot also be conveyed through PACA's existing paperwork regime. Since PACA requirements are in place for producers, suppliers, and retailers, we believe that this existing paperwork requirement should suffice as a verifiable audit trail for perishable agricultural commodities and peanuts.

With respect to meat commodities, it is not necessary to impose a mandatory animal identification program in order to implement country-of-origin labeling. This is true for two primary reasons. First, the labeling law strictly prohibits mandatory animal identification. Live animals are not defined as covered commodities. Rather, the meat products derived from live animals can be designated covered commodities, as long as those commodities fall within the definitions set forth by the law. Second, proven models

already exist within industry and USDA to verify the country-of-origin or birth of animals for various purposes. These models include the quality grade certification system, the existing voluntary country-of-origin labeling program for beef (which uses an affidavit to verify origin), "Certified Angus Beef" and similar programs that USDA implements to aid industry in promoting certain meat cuts for breed, the National School Lunch Program, Hazard Analysis and Critical Control Point (HACCP) regulations, and the Market Access Program (MAP). It is our understanding that none of these programs mandate the use of third party certification, yet, they appear to be effective tools in the tracking or verification of certain desired end traits. Therefore, we intend for the Secretary capitalize upon these existing programs rather than creating a new mandatory animal identification system and third party certification in order to verify origin.

Furthermore, USDA Health Certificates issued by the Animal and Plant Health Inspection Service (APHIS) ensures the tracking of all imported animals for slaughter without the need for a mandatory, animal identification system. By law, no animal may be imported into the U.S. without being accompanied by an APHIS health certificate. The application form for this certificate requires documentation as to the origin of the animal(s) being imported. The record keeping system applied for tracking imports may be helpful to the Secretary in carrying out the law.

With respect to seafood, Mandatory Seafood Hazard Analysis and Critical Control Point (HACCP) regulations (21 CFR 123) already provide for a system of record-keeping with a verifiable audit trail for handlers/processors of seafood commodities. Under current HACCP regulations, every stop of the harvest is a "critical control point" and as such, is required to maintain documentation attesting to compliance with these regulations. For seafood imports, every shipment must be accompanied by a HACCP certification from the company of origin. Using HACCP forms as an existing framework, it would be fairly easy to incorporate country of origin information into the existing procedures. In addition, FDA regulations (21 CFR Parts 101, 102) already require packaged foods, including seafood, to bear labels with identity and nutrition information, and thus country of origin information could be incorporated into the existing scheme with which retailers, packagers, and processors are already familiar.

It is important to note that Congress required that retailers provide consumers with information and maintain records indicating that the information they provide is consistent with the information provided to them. It did not extend or create record-keeping or disclosure requirements to any other party, although it had ample opportunity to do so. To suggest that not only retailers, but all their down-line suppliers conform with a complex new information system is beyond the scope of the legislation enacted by Congress, and may unnecessarily increase the cost of the program both to the government and the private sector.

Finally, to the maximum extent practicable, the Secretary shall enter into partnerships with States to verify the origin of covered commodities. For instance, Florida has had an effective country of origin labeling law for approximately 20 years, surely USDA could benefit from Florida's experience.

Penalties or Violations

We intend that the enforcement of the labeling law should accommodate unintentional violations of the program. As such, the law provides the Secretary with the authority to first issue a warning to a retailer violating the section, rather than a fine. For example, on the first occasion a retailer is found out of compliance with the labeling requirement, the Secretary may notify or warn the retailer in writing, and provide the retailer 30 days in which to take steps to comply with the labeling requirement. If subsequent to the 30 day period the Secretary determines that the retailer has willfully continued to violate the section, the Secretary must provide notice and opportunity for a hearing with respect to the violation before any further enforcement action can be taken. Finally, after such steps are taken, and if a retailer remains in violation of the labeling requirement, the Secretary may fine the retailer in an amount determined by the Secretary.

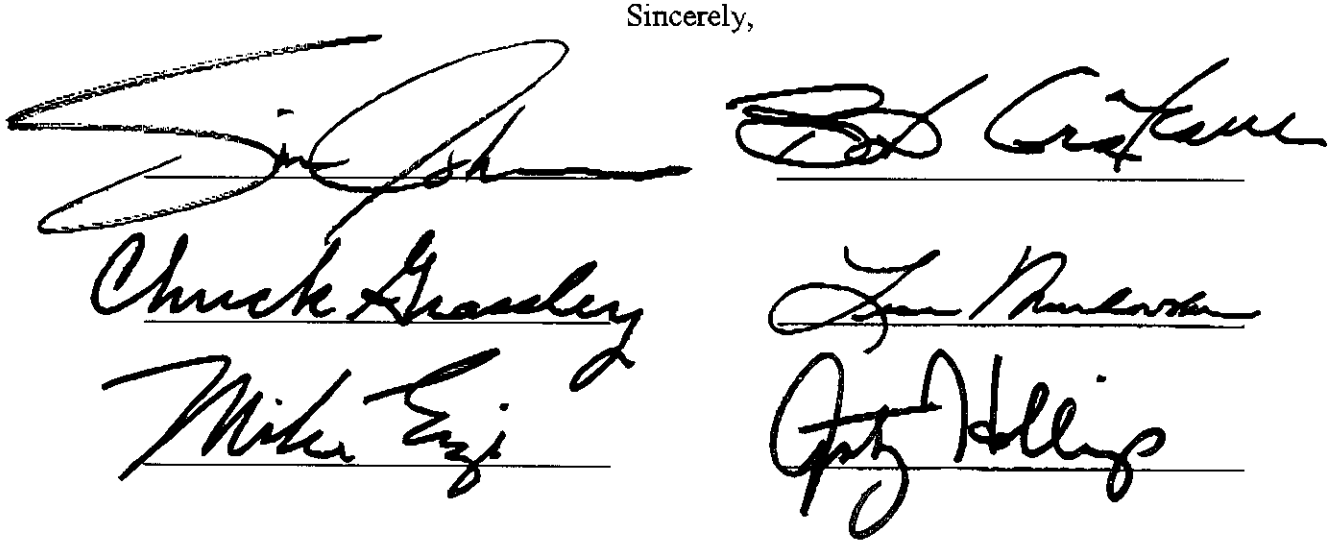
Economic Implications

We acknowledge the implementation of this comprehensive law will involve additional cost for industry participants. We understand USDA has provided an initial estimate of the cost, and encourage the Secretary to ensure existing industry and USDA programs are modeled to minimize cost and paperwork associated with the mandate.

We believe the benefits to consumers, which are difficult to quantify in an econometric fashion, will outweigh the costs if USDA and industry participants can determine ways to reduce paperwork and regulatory burden. We are aware of recent consumer surveys that indicate consumers desire to know the origin of the food they feed their families and they are willing to pay a premium for food labeled as coming from the U.S.

Thank you for the opportunity to provide comprehensive comments on the voluntary country of origin labeling guidelines. We recognize the complexity of this issue and we stand committed to working with you to ensure the program is implemented in a way that benefits consumers and minimizes cost.

Sincerely,



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